Supreme Court, U.S.
FILED
APR 20 2004
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(4)

No. 03-633

In the
Supreme Court of the United States

DONALD P. ROPER, Superintendent,
Potosi Correctional Center
Petitioner,

v.

CHRISTOPHER SIMMONS,
Respondent.

On Writ of Certiorari to the
Supreme Court of Missouri

BRIEF OF THE STATES OF ALABAMA, DELAWARE, OKLAHOMA, TEXAS, UTAH, AND VIRGINIA AS AMICI CURIAE IN SUPPORT OF PETITIONER

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April 20, 2004

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QUESTIONS PRESENTED

1. Once this Court holds that a particular punishment is not "cruel and unusual" and thus barred by the Eighth and Fourteenth Amendments, can a lower court reach a contrary decision based on its own analysis of evolving standards?

2. Is the imposition of the death penalty on a person who commits a murder at age seventeen "cruel and unusual," and thus barred by the Eighth and Fourteenth Amendments?

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INTEREST OF AMICI CURIAE

Pursuant to Supreme Court Rule 37.4, the States of Alabama, Delaware, Oklahoma, Texas, Utah, and Virginia submit this brief as amici curiae in support of petitioner, Donald P. Roper, Superintendent, Potosi Correctional Center. At issue is the question whether the Eighth Amendment categorically prohibits the execution of murderers who were younger than 18 years old when they committed their crimes.

In accordance with this Court's decisions in *Thompson v. Oklahoma*, 487 U.S. 815 (1988), and *Stanford v. Kentucky*, 492 U.S. 361 (1989), the State of Alabama has established 16 as the age at which an individual should be held fully responsible for his crimes and subject, in appropriate circumstances, to capital punishment. The State of Alabama thus permits, as the constitutional rule advanced by respondent would not, the execution – again, in appropriate circumstances – of murderers who were 16 or 17 when they killed their victims. *See Ex parte Davis*, 554 So. 2d 1111, 1114 (Ala. 1989). Accordingly, the State of Alabama has a concrete interest in the outcome of this case. The other amici likewise authorize capital punishment in appropriate circumstances for offenders under the age of 18, and thus also have a direct interest in the disposition of this case.

SUMMARY OF ARGUMENT

Amici's experience strongly indicates that a bright-line rule categorically exempting 16- and 17-year-olds from the death penalty – no matter how elaborate the plot, how sinister the killing, or how sophisticated the cover-up – would be arbitrary at best, and downright perverse at worst. Using abbreviated descriptions of a handful of murders committed by "juvenile" offenders currently on Alabama's death-row, this brief will show that, despite their chronological age, *at least some* 16- and 17-year-old killers most assuredly are able to distinguish

right from wrong and to appreciate fully the consequences of their murderous actions. Because a prophylactic constitutional rule taking capital punishment off the table for *all* such offenders would have no footing in the real world, it should be rejected.

Although this brief uses examples drawn from Alabama to make its point, the other amici hasten to note that their experiences have been no different. There simply is no basis to conclude that 16- and 17-year-olds are categorically incapable of committing heinous (and meticulously planned) murders, and there is no justification for categorically exempting them from the death penalty.[1]

ARGUMENT

Once again, this Court is asked to "'draw a line' that would prohibit the execution of any person who was under the age of 18 at the time" he or she committed capital murder. *Thompson v. Oklahoma*, 487 U.S. 815, 838 (1988); *see also Stanford v. Kentucky*, 492 U.S. 361 (1989). As it has done twice before, this Court should decline to impose that sort of constitutional prophylaxis.

The States' purpose in filing this brief is a limited one. It is simply to show – using the facts of real-world cases – that there is no principled basis for concluding that 16- and 17-year-old murderers, as a class, are categorically incapable of acting with a degree of moral culpability

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[1] Virginia notes its own experience with Lee Boyd Malvo – one of the snipers who plagued Virginia and Maryland in 2002. This experience illustrates both the heinousness of the crimes of which juveniles are capable as well as the ability of jurors to take a juvenile's age into account along with other factors in determining whether to impose the death penalty. *See Commonwealth v. Malvo*, Sentencing Order, Criminal No. K102888 (Fairfax Co. Cir. Ct., March 10, 2004) available at http://www.fairfaxcounty.gov/courts/cases/malvo_orders.htm (reciting conviction of capital murder, but ordering life without parole, on jury's recommendation). The fate of such criminals should be decided on a case-by-case basis rather than by the categorical rule sought by respondent.

deserving of society's severest punishment. Adolescents are fundamentally distinguishable from the mentally retarded in that respect. This Court's decision in *Atkins v. Virginia*, 536 U.S. 304 (2002), exempting mentally retarded murderers from the death penalty rests, at bottom, on a judgment that retarded offenders are, by virtue of their limited cognitive abilities, less blameworthy than non-retarded offenders. That sort of clinical assessment simply does not hold for adolescents. Some juvenile offenders, to be sure, are not capable of the sort of cold-blooded calculation to which the death penalty is properly addressed. But others most assuredly are. And that is the point: a juvenile offender's moral culpability, if it is to have any mooring in reality, must be assessed on an individualized basis.

As this Court held in *Stanford*, "[i]n the realm of capital punishment in particular, 'individualized consideration [is] a constitutional requirement.'" 492 U.S. at 375 (quoting *Lockett v. Ohio*, 438 U.S. 586, 605 (1978)). Indeed, "one of the individualized mitigating factors that sentencers must be permitted to consider is the defendant's age." *Id.* (citing *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982)). There simply is no warrant, either in law or in fact, for abandoning the touchstone of individualized sentencing, which sensibly has characterized this Court's death-penalty jurisprudence for nearly a quarter century, in favor of a prophylactic rule that bears no necessary relationship to an adolescent offender's actual moral culpability. Where an individual offender – whether adolescent or adult – truly cannot appreciate the wrongfulness of his actions, he should by all means be spared the death penalty. But where an individual – again, adolescent or adult – *can* make informed moral choices, he should be held fully responsible for the human consequences of those choices.

The following summaries, abbreviated descriptions of murders committed by current Alabama death-row inmates when they were 16 or 17 years old, leave little room for doubt that *at least some* adolescent killers most

assuredly have the mental and emotional wherewithal to plot, kill, and cover up in cold blood. They should not evade full responsibility for their actions by the serendipity of chronological age.

1. Mark Anthony Duke – Age 16

Angry at being refused permission to borrow the family truck, Mark Duke (16 at the time) enlisted the aid of three co-conspirators – Brandon Samra (19), Michael Ellison (16), and David Collums (17) – to help him kill his father, Randy Duke. Aware that he would need to conceal his crime, Duke insisted that "they could not leave any witnesses." *Duke v. State*, 2002 WL 1145829, at *1 (Ala. Crim. App. May 31, 2002). Accordingly, Duke also plotted the murders of his father's girlfriend, Dedra Hunt, and her two young children, Chelisa (6 years old) and Chelsea (7 years old). *Id.* at *1-3.

Even the bare-bones facts of the crime show vividly the careful calculation with which Duke planned, executed, and tried to cover up the murders. On the evening of March 22, 1997, Duke and the three co-conspirators went to the Duke residence to ask permission to use the family truck. When his father refused, Duke became angry; he told his friends that he was tired of his father being so bossy and not letting him do what he wanted to do. Duke said that he wanted to kill his father. *Id.* at *1.

When the group returned to Ellison's house, Duke reiterated – in all seriousness – that he wanted to kill his father. Accordingly, Duke wiped the fingerprints from a .45 caliber pistol, the gun's clip, and bullets; Ellison cleaned the prints off of a .32 caliber pistol. When he had finished his preparations, Duke again said that he wanted to go to his house and kill his father – so they went. *Id.* at *1.

When the four arrived at Duke's house, Duke said – again – that he was going to kill his father (R. 1810[2]) and, further, that he would have to kill the two little girls and their mother so as to eliminate witnesses. *Duke*, 2002 WL 1145829, at *1; R. 1812. Duke, who still had the .45, asked Samra (now carrying the .32) to go in with him. R. 1812-13. After instructing Collums and Ellison to meet them in the neighborhood behind the house, Duke led Samra inside his father's house. R. 1813. According to Duke's plan, Samra was to kill Dedra Hunt; Duke would take care of his father and the little girls. R. 1814.

Dedra Hunt and her girls were on the couch by the fireplace, watching television. R. 1813. After initially waiting for Duke's father in the master bedroom, Duke and Samra went into the kitchen as Randy Duke came up from the basement and sat on the fireplace. R. 1814. Pursuant to Duke's instruction, Samra went after Dedra while Duke approached his father and shot him at close range. R. 1815. Samra shot Dedra in the face, knocking out teeth but not killing her. Dedra (now bleeding profusely) and the girls fled upstairs, with Samra in pursuit. *Duke*, 2002 WL 1145829, at *2. Meanwhile, Randy Duke begged his son to spare his life; in response, the younger Duke said that he was tired of his father not letting him do what he wanted. R. 1816. Duke raised his gun to fire another shot at his father, but the gun jammed. R. 1817. After clearing the chamber, stabbing his father numerous times, and hitting him with his fist (R. 2257-59), Duke said that he would see his father in hell and shot him between the eyes. *Duke*, 2002 WL 1145829, at *2.

Dedra Hunt had also begged for mercy. R. 1817. As she and her little girls ran upstairs, Samra chased after her, shooting at her again. Dedra managed to lock herself and one of her daughters, Chelisa, in the master

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[2] All "R. ___" references are to record pages in the cases being discussed.

bathroom. When Samra was unable to pry the door open, Duke arrived from downstairs and kicked a hole in the door, reached through, and unlocked it. Duke shot Dedra Hunt in the forehead, killing her instantly. Duke then found 6-year-old Chelisa cowering in the shower; telling her that it would only hurt for a minute, Duke slit the child's throat. *Duke*, 2002 WL 1145829, at *2.

Duke then told Samra that they had to find the other little girl, 7-year-old Chelsea. They found her hiding under a bed in one of the upstairs bedrooms. R. 1821-22. As Duke pulled Chelsea from underneath the bed, she pleaded for her life. R. 1822-23. Duke tried to slit Chelsea's throat as he had her sister's, but she struggled, in the process sustaining 15 lacerations to her face and hands. R. 1823. Samra refused to help finish the little girl off until Duke yelled at him. *Id.* Duke then held Chelsea down while Samra slit her throat. *Id.*

The gruesome murders complete, the elaborate cover-up began. Duke stole his father's wallet, fled the house, and ditched the knives in a nearby storm drain. *Duke*, 2002 WL 1145829, at *2. Afterwards, Duke and Samra met back up with Collums and Ellison – just as Duke had instructed – in the neighborhood behind the Duke home. R. 1825. Duke and Samra washed up and stashed the guns. While fleeing the scene in Ellison's truck, Duke warned his co-conspirators that he would kill them if they told anyone about the murders. R. 1826.

In an attempt to establish an alibi, the group went to see the movie "Scream" and kept the ticket stubs. *Duke*, 2002 WL 1145829, at *2. They stayed at the movie only a short time, however, before deciding to get something to eat and to play pool. R. 1829-30. During the night, they threw their bloody clothes and Randy Duke's wallet into a trash dumpster near Ellison's house. R. 1830.

The following day, at Duke's instruction, all four co-conspirators returned to the Duke home to ransack it so that police would think that a robbery had occurred. R. 1831-34. Duke then planned to telephone the police to tell them that his family had been murdered. R. 1836.

Before placing the call, the four rehearsed the alibi they would give the police if questioned. R. 1838. Duke called the police and, when questioned later, gave a statement consistent with the agreed-upon alibi.

According to the state medical examiner, Randy Duke died as a result of the gunshot between his eyes inflicted by his son. R. 2254. Another shot delivered by the younger Duke traveled downward from Randy Duke's cheek and into his shoulder. R. 2255-56. Examination of the father also revealed numerous stab wounds to the head, face, neck, and chest, as well as many contusions and bruises. R. 2257-59. Dedra Hunt suffered three gunshot wounds. R. 2263. The fatal wound was a shot to the head – again delivered by Duke. R. 2264.

Chelisa suffered two 5¼ inch lacerations – at Duke's hands – across her throat. R. 2268. She aspirated her own blood for several minutes, and then died. R. 2268-70. Chelsea sustained deep cuts on her face and neck, as well as the fatal cut across her throat. R. 2272-73. She also suffered 15 defensive wounds to her right hand and several more to her left. R. 2275-77. Like her younger sister, Chelsea aspirated her own blood for a few minutes before she died. R. 2274.

Both Duke and Samra were sentenced to death for their roles in the quadruple murders Randy Duke and Dedra, Chelisa, and Chelsea Hunt. Under the bright-line rule advanced by respondent, Duke – who was by all accounts the mastermind and ring-leader of the attack, and was in any event the trigger-man (or knife-wielder, as the case may be) in three of the four murders – would escape capital punishment, while his minion, Samra, would not. That, at least as a principle of constitutional law, is nonsensical.

2. Marcus Pressley – Age 16

During a three-month stretch in 1996, Marcus Pressley (16) committed a series of eight nearly identical

robberies resulting in the murders of three individuals and the attempted murders of three more.

Having already murdered one store clerk with a gunshot to the back (as the clerk attempted to escape), *see Presley v. State*, 770 So. 2d 104, 105-07 (Ala. Crim. App. 1999); R. 372, 495, Pressley's crime spree culminated in the grisly double-murder of a pawn broker and his employee. Pressley entered John's 280 Pawn Shop under the pretense of shopping for a stereo. Having cased the joint, Pressley returned thirty minutes later with his regular accomplice, LaSamuel Gamble (18 at the time). Pressley pulled a gun on one of the shop's employees, Janice Littleton, while Gamble forced the manager, John Burleson, to the floor at gunpoint. Pressley and Gamble stole at least 30 guns, jewelry, and $2300 in cash. *Pressley v. State*, 770 So. 2d 115, 120-21 (Ala. Crim. App. 1999). Gamble fled with the loot to the truck. R. 1217-18, 1412, 1420. Pressley stayed behind to finish the job.

Pressley first stood over John Burleson, raised his .380 revolver, and fired a shot into Burleson chin. R. 1608-09. Perceiving that Burleson was still alive, Pressley raised the gun again and pulled the trigger, but the gun jammed. R.1140, 1627. Pressley calmly paused and attempted to clear the gun. R.1140, 1413-14, 1627. Some twenty seconds later, Pressley pointed the barrel of the gun at Burleson's temple and again pulled the trigger. R.1140, 1605-08, 1627. The gun fired, and a bullet lodged in Burleson's skull, killing him. R.1140, 1605-08, 1617, 1627.

Pressley then turned to Janice Littleton. R. 1135. He raised his gun and pulled the trigger, but again the gun jammed. R.1140, 1627. As before, Pressley calmly cleared the gun. *Id.* A full thirty seconds later, having cleared the jam, Pressley aimed and fired, shooting Littleton in the back of the head, and then left her to die. R.1141, 1414-15, 1611, 1618-19, 1627. The entire gory sequence was recorded by the store's surveillance system. *Pressley*, 770 So. 2d at 121.

Both Pressley and Gamble were sentenced to death for the pawn-shop murders. Once again, the prophylactic rule advanced by respondent, if applied here, would defy common sense. Under that line, Gamble – who was 18 at the time but did not actually kill anyone – would face the death penalty,[3] but Pressley – who at 16 executed two people with startling coolness – would get a free pass. Surely the Eighth Amendment does not, as a matter of constitutional principle, mandate such a bizarre result.

3. Kenneth Loggins and Trace Duncan – Age 17

On the night of February 21, 1994, Kenneth Loggins (17), Trace Duncan (17), and two other teenage co-conspirators – Carey Dale Grayson (19) and Louis Mangione (16) – picked up hitchhiker Vickie Deblieux, who was traveling to her mother's home in Louisiana. *Loggins v. State*, 771 So. 2d 1070, 1074-75 (Ala. Crim. App. 1999); *Duncan v. State*, 827 So. 2d 838, 840-42 (Ala. Crim. App. 1999). Over her objections, the four co-conspirators took Vickie to a secluded rural area. After throwing bottles at her as she tried to escape, Loggins and Grayson tackled Vickie, and then with Duncan kicked and stomped her for some 30 minutes until she died. *Duncan*, 827 So. 2d at 841. At the end of the vicious attack, Loggins stood on Vickie's throat until she gurgled blood and then exclaimed, "Okay, I'll party."

The attackers threw Vickie's body into the back of their truck, stripped her naked, and played with her lifeless body – at one point inserting a beer bottle into her vagina. *Id.* When they had finished, they threw Vickie's body off a cliff. *Loggins*, 771 So. 2d at 1074. After disposing of the body and hiding Vickie's luggage in the

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[3] *See* Ala. Code § 13A-5-40(c) (accomplice liability for capital murder); *Tison v. Arizona*, 481 U.S. 137 (1987) (Eighth Amendment does not prohibit death penalty as disproportionate in case of defendant whose participation in felony that results in murder is major and whose mental state is one of reckless indifference).

underbrush, Loggins, Duncan, and Grayson took Mangione home and then returned to the crime scene, where they further mutilated Vickie's corpse – stabbing and cutting her 180 times, removing a portion of one lung (one reportedly even bit into it), and cutting off her fingers and thumbs. *Duncan*, 827 So. 2d at 841.

The three teens later explained the blood on their clothes and truck as having come from a stray dog. *Id.* All four co-conspirators were later arrested after Mangione was reported to have been showing off one of Vickie's severed fingers to friends. *Id.*; *Loggins*, 771 So. 2d at 1075.

Loggins, Duncan, and Grayson were all sentenced to death for their roles in Vickie's murder. Again, an arbitrary 18-year-old cut-off would result, nonsensically, in a constitutional rule permitting capital punishment for Grayson, who was 19 at the time, but not for Loggins and Duncan, both of whom were 17 but plainly are every bit as culpable – if not more so – in Vickie's death and mutilation.

4. William Thomas Knotts – Age 17

In October of 1989, William Thomas Knotts (17) and another teenager escaped from a juvenile detention facility and spent some 24 hours wandering around Montgomery County, Alabama. Angered by what he perceived to be an insult directed at him by Helen Rhodes – namely, splashing water on him with her car – Knotts located Rhodes' house so that he could "get back at her" later. *Knotts v. State*, 686 So. 2d 431, 442 (Ala. Crim. App. 1995).

After being returned to the juvenile facility, Knotts escaped again some two weeks later. Knotts headed straight for Helen Rhodes' home, stopping on the way to burglarize two other houses to steal guns, ammunition, cash, food, and clothing. *Id.* at 442.

Knotts broke into Helen Rhodes' home, placed his wet clothes and shoes in her dryer, and waited for her to

return. Knotts waited there, he said, "approximately an hour and a half . . . for her to come home so he could shoot her for splashing water on him." *Id.* at 443. While he waited, Knotts watched television and wrote a note to be left at the scene – intended to mislead police to believe that the murder he planned to commit was gang-related. When Helen arrived home with her two-year-old son, Knotts shot her in the arm. As her young son screamed, Knotts shot Helen a second time in the back. She died almost immediately. *Id.* at 442.

Fearing that someone might have heard the shots, Knotts gathered his loot from the earlier burglaries along with Helen's purse and her husband's shoes and travel kit, and then left town in her car. Helen's husband returned four to five hours later to discover "his wife's body and his son, whose clothing was soaked with his mother's blood, sitting beside her body, crying." *Id.* at 443.

5. Renaldo Chante Adams – Age 17

During the evening of August 20, 1997, Andrew Mills fell asleep on his couch watching television – his wife Melissa and their three young children were asleep in their rooms. He was later awakened by an intruder, Renaldo Adams (17), wearing a stocking pulled over his head. *Adams v. State*, 2003 WL 22026043, at *1 (Ala. Crim. App. Aug. 29, 2003).

As Adams threatened Mills with a knife, Mills begged Adams not to harm his family – offering Adams money if he would leave them unharmed. Adams ordered Mills to the couch and proceeded to the bedroom where Melissa was sleeping. When Mills heard the bedroom door open, he crept toward the bedroom, where he discovered Adams on top of his wife. Mills told Adams that his wife was four months pregnant and again pleaded with Adams not to harm his family. *Id.* at *1. Adams then jerked Melissa off the bed and held her hostage with a boning knife. R. 426. Adams forced Melissa back to the living area, took her engagement ring and what little cash was in the

house, and then ordered Mills to go to an ATM for more money. R. 426-27. Mills, of course, agreed and soon returned with $375 – the maximum amount that could be withdrawn in a single transaction. Adams was not satisfied; he sent Mills back out for more money. *Adams*, 2003 WL 22026043, at *1.

Mills drove to a grocery store where a store employee called police. Mills informed the 911 operator that an intruder was holding his family at knifepoint, and officers were dispatched immediately to his home. *Id.*

Back at the house, Mills and police initially were unable to gain entry because the front door was locked. Eventually, one of the Mills' young daughters opened the door. As police officers chased Adams through the house, Mills' daughters directed him to their mother. R. 437. Mills found his wife in the bedroom soaked in her own blood and gasping for breath. *Adams*, 2003 WL 22026043, at *1. She, along with her unborn child, died three hours later from massive blood loss caused by repeated stab wounds to the neck, liver, and lungs; Adams had raped her before killing her. *Id.* at *2.

6. Timothy Davis – Age 17

Sixty-eight year old Avis Alford was working alone in her grocery store in Coosa County, Alabama, when Timothy Davis (17) entered. Davis proceeded to rob, sodomize, and brutally murder Mrs. Alford – stabbing her 17 times in the back with a common steak knife. *Davis v. State*, 554 So. 2d 1094, 1096-97 (Ala. Crim. App. 1984).

Shortly after police discovered Alford's nude body, Davis, along with his wife and mother, came to the scene and told police that he had earlier found Mrs. Alford's body and that he had panicked and fled. He further said that he had gotten blood on his clothing from lifting her body and had returned home to change before making a report of the murder. Finally, Davis stated that he had seen two black men leaving the area after he discovered

the body; when pressed, Davis could not give a description of either one. *Id.* at 1097.

Human sperm was recovered from Mrs. Alford's rectum. *Id.* at 1097. A stain composed of the combination of human sperm, fecal matter, and tissue from the inside of the rectum, was recovered from the crotch area of the underwear Davis had been wearing. *Id.* at 1098. Blood stains matching Mrs. Alford's blood type were also found on the inside of Davis's jeans and splattered across his motorcycle helmet. *Id.* at 1097. Davis later admitted the crime to a fellow inmate while awaiting trial. *Id.* at 1098.

CONCLUSION

If the cases detailed in this brief show anything, it is that there is no magic in the age 18. Just as there are adults who, for whatever reason, cannot fully comprehend the wrongfulness of their actions, there are adolescents – 16 and 17 year-olds, to be sure – who *can*. A teenager who plots like an adult, kills like an adult, and covers up like an adult should be held responsible for his choices like an adult.

Because 18 is not "the age before which *no one* can reasonably be held fully responsible" for the murder of another human being, *Stanford*, 492 U.S. at 376 (plurality opinion), the judgment of the Supreme Court of Missouri – which rests on an arbitrary and ultimately unsupportable prophylactic line – should be reversed.

Respectfully submitted,

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